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In the Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339

SOUTHERN PACIFIC COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 72) has not yet been reported.

JURISDICTION

The judgment sought to be reviewed was entered on June 1, 1931. (R. 82.) The petition for certiorari was filed on August 31, 1931. (R. 83.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether the following classes of persons, traveling in time of peace on active duty, are "troops of the United States" within the meaning of the laws

giving the Government deductions from the regular transportation charges of land-grant railroads:

1. Military prisoners and guards.
2. Members of the Officers' Reserve Corps.
3. Members of the Nurse Corps of the Navy.
4. Engineer officers of the War Department.
5. Enlisted men escorting remains of deceased soldiers.
6. Enlisted men ordered to new station.
7. Officers of Medical Reserve Corps.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, p. 11–12.

STATEMENT

The following is a summary of the facts found by the Court of Claims (R. 64–72):

During 1920 to 1923 the petitioner transported passengers over certain of its railroad lines which had been constructed with the aid of grants of land by the United States. (R. 65.) Under the applicable statutes such land-grant railroads are required to transport troops and property of the United States at not over fifty per centum of the usual rates. (R. 65.) During these years the petitioner transported certain classes of persons upon transportation requests issued by the Government. (R. 66.) In settling its accounts for this transportation the accounting officers of the United States required the petitioner to make certain deductions

from the ordinary commercial fares on the ground that the persons transported were troops of the United States and so entitled to the reduced rates under the land-grant Acts. (P. 11, *infra.*) (R. 66.)

In this suit to recover these deductions the Court of Claims allowed recovery of certain items, holding certain of the persons so transported were not United States troops. There is no question now raised as to the correctness of that recovery. The court denied recovery as to fares paid for the following classes of these persons so transported by the petitioner: Military prisoners and guards, members of the Officers' Reserve Corps, the Nurse Corps of the Navy, and the Medical Reserve Corps, enlisted men changing station and escorting remains of deceased soldiers, and engineer officers of the War Department. All these persons were travelling in peace time and were on active duty. (R. 67–71.)

ARGUMENT

In deciding the instant case the Court of Claims relied upon its previous decisions in *Louisville & Nashville Railroad Co.* v. *United States,* 62 C. Cls. 154, and *Illinois Central Railroad Co.* v. *United States,* 62 C. Cls. 61, certiorari denied 273 U. S. 710. The arguments now advanced by the petitioner were presented to this Court in the application for certiorari in the latter case. Counsel for the petitioner now frankly state that they are "not satisfied with the correctness of the *Illinois Central* decision." (Pet. Brief, p. 48.) Although the cases

differ slightly on their facts, we submit that the decision below was controlled by those cases and that there is no occasion for this Court to review it.

I

MILITARY PRISONERS AND GUARDS

Members of this class of railroad passengers were all enlisted men of the Army, Navy, or Marine Corps. (R. 67.) Some had been convicted of an offense, and all the prisoners were travelling under guard of other enlisted men. None had been discharged from service. The fact that some were prisoners under military guard did not change their status as soldiers or troops of the United States. In some instances the prisoner was charged the cost of his transportation by the Government. This was of no concern to the petitioner, for the prisoners were enlisted men travelling under military orders. This identical point was decided adversely to the petitioner's contentions in both the *Illinois Central Railroad Co.* and *Louisville & Nashville Railroad Co. cases, supra.*

II

MEMBERS OF THE OFFICERS' RESERVE CORPS

Members of this class of passengers were travelling to and from encampments under orders of the Secretary of War. (R. 69.)

The Act of June 4, 1920 (*infra*, p. 12), provides, in part:

> The Army of the United States shall consist of the Regular Army, the National

> Guard while in the service of the United States, and the Organized Reserves, including the Officers' Reserve Corps and the Enlisted Reserve Corps.

This statutory provision is pertinent and controlling as to this class. The identical point was decided adversely to the petitioner's contentions in the *Illinois Central Railroad Co. case, supra.*

III

MEMBERS OF THE NURSE CORPS OF THE NAVY

Members of this class of railroad passengers were traveling on active duty. They were subject to military discipline and to the right of retirement, and were part of a unit of the United States Navy.

The Revenue Act of February 24, 1919, c. 18, 40 Stat. 1057, 1058, provides, in part:

> The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female, but this shall not be deemed to exclude other units otherwise included within such term.

Although this definition was established for the purposes of a tax act, it indicates the true status of the Nurse Corps as a military unit of the United States Navy.

In *Louisville & Nashville Railroad Company* v. *United States,* 258 U. S. 374, this Court held that the Coast Guard, operating in peace time under the Treasury Department, were not "troops," but

commented as follows upon the other branches of the United States forces:

> The military force of the United States is, and always has been a unit, although divided for purposes of administration into several branches; and there is nothing in the land-grant acts to indicate an intention on the part of Congress to differentiate between the several branches in respect to transportation charges. We are of opinion that the term "troops" is not confined to land forces, and that it includes men and officers in every branch. Since those in the Navy and Marine Corps are to be deemed troops within the meaning of those acts, members of the Coast Guard should also be deemed such when serving as part of the Navy.

The Nurse Corps of the Navy is as much an integral part of the military forces of the country as the other units of the Navy. We submit that its members are troops within the meaning of the land-grant provisions.

The identical point was decided adversely to the petitioner's contentions in *Louisville & Nashville Railroad Co.* v. *United States*, 62 C. Cls. 154, *supra*.

IV

ENGINEER OFFICERS OF THE WAR DEPARTMENT

Members of this class of railroad passengers were all officers of the Engineer Corps of the United

States Army (R. 70.) They were on active duty and were travelling in connection with their official duties in superintending river and harbor improvements. Their appointment was under the act of June 13, 1902, c. 1079, 32 Stat. 372, 373, which provided, in part:

> That there shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of five engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred * * * projects for works of river and harbor improvement * * *.

These officers were so detailed and were carrying out their official duties. That such officers of the Engineer Corps were "troops of the United States" within the land-grant provisions was specifically decided in 18 Opinions of Attorney General, 572.

V

ENLISTED MEN INCLUDING REMAINS OF DECEASED SOLDIERS

Members of this class were all enlisted men. They were travelling under military orders on military duty. The petitioner in discussing this class of passengers at pages 62-64 of its Brief in Support confuses the issue by arguing that the deceased enlisted men whose remains were being escorted

should not be considered "troops." This is beside the point. It is found as a fact (R. 71) that—

> "full commercial rates were paid by the Government for the transportation of the persons which they were escorting."

The only issue is in regard to the fare of the enlisted men composing the military escort. It seems clear that these soldiers did not cease to be "troops" merely because of the nature of this peculiar duty imposed upon them.

VI

ENLISTED MEN ORDERED TO NEW STATIONS

These passengers were soldiers. They were enlisted men on active duty. The petitioner would not have disputed their status as "troops of the United States" except for the fact that their transportation requests were indorsed "Commanding officer notified of amount to be charged against soldier." We submit that this indorsement is immaterial. It is a matter between the soldier and the Government. There is no evidence that the fare was so charged to the soldier. If he had been so charged, he would not have ceased to be an enlisted man under military orders. In considering these land-grant statutes, this Court recently stated in *United States v. Galveston, Harrisburg & San Antonio Railway Co.*, 279 U. S. 401, 404:

> The right of the United States to have the concessions and allowances in respect of transportation made by the carriers in con-

sideration of the aid given is a continuing one. It is of great value to the Government and of course correspondingly burdensome to the carriers. The terms of the obligation are to be sensibly and fairly read according to the words employed and not expanded or restricted by construction.

We submit that enlisted men changing station or returning to station are "troops" within the ordinary meaning of the word. They were "troops" at one station, and will be "troops" upon arrival at the new station. It would require a strained construction of the land-grant provisions to hold that their status changed merely because they were being transported to or from their post of duty.

VII

OFFICER OF MEDICAL RESERVE CORPS

This passenger was being transported prior to his relief from active duty. (R. 72.) The petitioner in its Brief in Support (page 66) classes this officer for the purposes of its argument with the other members of the Officers' Reserve Corps. This we believe to be correct. The status of the various Reserve Corps should be the same. For the reasons set out in point II of this Brief, we submit that the decision below in regard to this officer was correct.

CONCLUSION

The decision of the Court of Claims follows the most applicable decisions of this Court and its own

prior decisions. There is no authority to the contrary. While the questions involved are recurring and of importance to the parties, we submit that they have already been adequately considered and correctly decided. There is no occasion for a further review by this Court. The petition should be denied.

Respectfully submitted.

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NOVEMBER, 1931.

APPENDIX

STATUTES INVOLVED

Each of the Acts of Congress granting aid in the construction of the petitioner's railroads contained the following provisions:

> * * * And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States. (Sec. 5, Act of July 25, 1866, c. 242, 14 Stat. 240, 241.)
>
> That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation. (Sec. 11, Act of July 27, 1866, c. 278, 14 Stat. 297.)

The Act of June 3, 1916 (c. 134, 39 Stat. 166), making further and more effectual provisions for the national defense, is as follows:

> SEC. 1. The Army of the United States shall consist of the Regular Army, the Volunteer Army, the Officers' Reserve Corps,

the Enlisted Reserve Corps, the National Guard while in the service of the United States, and such other land forces as are now or may hereafter be authorized by law.

The Act of June 4, 1920 (c. 227, 41 Stat. 759), amending the National Defense Act of June 3, 1916, contains the following provisions:

SECTION 1. That the Army of the United States shall consist of the Regular Army, the National Guard while in the service of the United States, and the Organized Reserves, including the Officers' Reserve Corps and the Enlisted Reserve Corps.

The Act of May 13, 1908 (c. 166, 35 Stat. 127, 146), making appropriations for the naval service for the fiscal year ending June 30, 1909, and for other purposes, provided as follows:

The Nurse Corps (female) of the United States Navy is hereby established, and shall consist of one superintendent, to be appointed by the Secretary of the Navy, who shall be a graduate of a hospital training school having a course of instruction of not less than two years, whose term of office may be terminated at his discretion, and of as many chief nurses, nurses, and reserve nurses as may be needed.

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